

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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MAY - 4 2007

Federal Communications Commission
Bureau / Office

In the Matter of)

CITY OF BOSTON)

PS Docket No. 07-69

and)

SPRINT NEXTEL CORPORATION)

Mediation No. TAM-11155

Relating to Rebanding Issues in the 800 MHz Band)

To: Chief Administrative Law Judge

MOTION TO DELETE /COMBINE ISSUES

The City of Boston, by and through counsel, and pursuant to 47 C.F.R. §1.229(a), hereby requests that an issue appearing in the Hearing Designation Order released April 5, 2007 in the above captioned matter, be deleted from those issues which are subject to the instant hearing. Additionally, the City of Boston requests that two issues be combined for consideration within the hearing. In support of this motion, the following is stated:

I. Issue To Be Deleted

The Hearing Designation Order listed three issues in dispute between the parties.¹ Since the issues were submitted to the Public Safety and Homeland Security Bureau, the parties have resolved that issue identified at Paragraph 8c. and described by the PSHSB as "To determine, in the matter of the BTT case, the appropriate contractual language to govern the change order process in the FRA entered into between the City of Boston and Sprint Nextel." The resolution

¹ Hearing Designation Order at para. 8

of this issue arose out of continuing negotiations between Sprint Nextel and the City of Boston's legal counsel related to changes in the terms and conditions which would appear in Frequency Reconfiguration Agreements ("FRAs") between Sprint Nextel and clients of Schwaninger & Associates, P.C. Accordingly, the matter is believed to be fully resolved and is not appropriate for inclusion within this proceeding, since to the best of the City of Boston's knowledge and belief, this issue is no longer in dispute between the parties.

II. Issues To Be Combined

The instant matter arises out of two negotiations between the parties. The first negotiation involved the rebanding of 800 MHz facilities operated by the City of Boston Police Department. The estimates of costs and line items appearing on documents exchanged by the parties were intended to support that rebanding as though the City of Boston had no other systems which were subject to rebanding. That is, the contract provisions would be capable of standing alone, without reference to any other contract into which the parties might later enter. Accordingly, the total cost of the subject MCM Technology software, without reference to its use by other City departments, was included in the estimates provided in the record related to the negotiation of this FRA.

The second, separate negotiation related to facilities which are operated by the City of Boston for its Trunking and Transportation facilities. Again, the contract was negotiated in a manner which would enable the terms to stand alone, without regard to any other deal into which the parties might enter, whether negotiated prior in time or following the parties' entrance to that

FRA. Consequently, the total cost of the MCM Technology software was again quoted without reference to any anticipated shared use of the software among affected City departments,

Despite the manner by which the agreements were negotiated and the quotes provided, in fact the City proposed that the subject MCM software would be employed for all rebanding efforts in which the City of Boston would engage. Therefore, it was contemplated that a single software license would be obtained and, thus, the two quotes provided under the two draft FRAs, if added together, would not reflect the actual costs of the MCM software and would, instead, inflate the estimates by duplicating most of the costs associated with the proposed use of the MCM software.

The City of Boston always intended to share the use of the software among departments and, in essence, spread the benefit over the two subject rebandings and other future rebanding efforts.’ Said directly, the City of Boston proposes to buy a single license to employ the MCM software, not two licenses as suggested by the language within the Hearing Designation Order. Therefore, there does not truly exist two issues related to the MCM software, but rather one.

Accordingly, the City of Boston respectfully requests that the issues appearing at paragraph 8a. and 8b. of the Hearing Designation Order be combined into a single issue which would state:

² For example, recording and reporting costs related to the ultimate rebanding of City of Boston radios operating on the State of Massachusetts mutual aid channels, which costs are not covered by the subject agreements, would also be impacted by the availability of the MCM software.

To determine, whether Sprint Nextel is obligated to pay the City of Boston for inventory-tracking and management software from MCM Technology, L.L.C., and, if so, the amount of such payment;

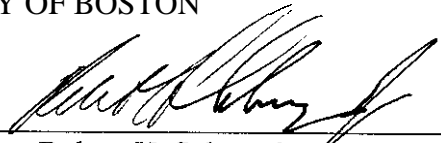
If this issue is not combined, it could inadvertently lead to confusion and redundancy in the presentation of evidence at the hearing. As presently stated, the City of Boston would need to present evidence first related to the Police Department radio system, then it would be required to present evidence related to the Trunking and Transportation radio system. However, the software is to be obtained via a single license from MCM to the City of Boston, not two. Training efforts of the City's internal personnel would occur at one time, not two. Installation and maintenance of the software would be accomplished at one time, not separately. Therefore, the cost of acquiring and using the software involves a single purchase and use in combination between affected departments sharing a single software license.

For the purpose of reducing the overall burden upon the City of Boston, Sprint Nextel, and the Administrative Law Judge, the City of Boston respectfully requests that these separately identified issues be treated as a single issue for the purpose of presentation of evidence and ultimate decision by the Judge.

III. Conclusion

For the reasons stated and for good cause shown, the City of Boston respectfully requests that the issue identified at paragraph 8a. of the Hearing Designation Order be deleted as having been settled between the parties; and that the issues at paragraphs 8b. and 8c. be combined into a single issue as stated above.

Respectfully submitted,
CITY OF BOSTON

By 
Robert H. Schwaninger, Jr.

Dated: May 5, 2007

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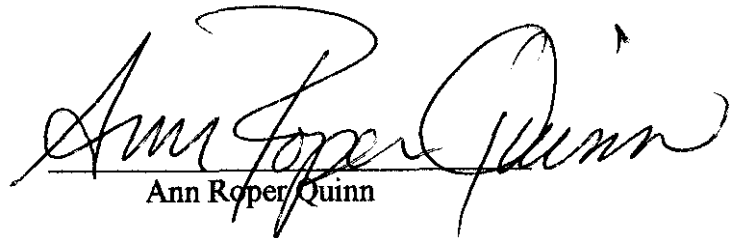
I, **Ann** Roper Quinn, an authorized representative of the City of Boston, hereby declare under penalty of perjury the following:

I participated in the negotiation of the Frequency Reconfiguration Agreements that **are** the subject of this hearing.

I have personal knowledge of the facts and circumstances articulated within the foregoing **MOTION TO DELETE/COMBINE ISSUES** and the facts and circumstances articulated therein are true and accurate.

Further affiant sayeth not.

Dated: 5/3/07

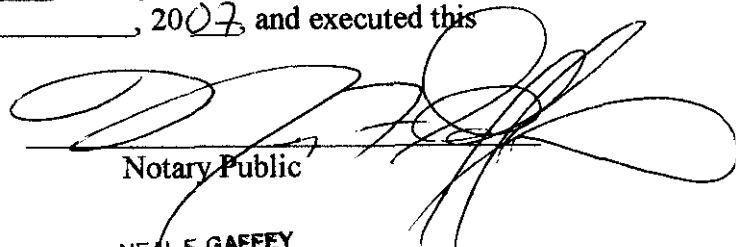

Ann Roper Quinn

NOTARY

County of Suffolk

~~State of~~ Commonwealth of Massachusetts

I, Neal F. Gaffey, hereby declare that Ann Roper Quinn did appear before me this 3rd day of May, 2007 and executed this Affidavit.


Notary Public

My Commission Expires:



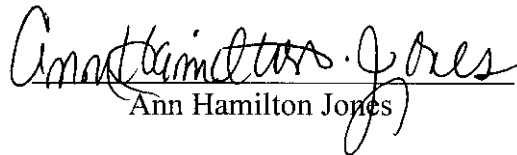
NEAL F. GAFFEY
Notary Public
Commonwealth of Massachusetts
My Commission Expires
May 14, 2010

CERTIFICATE OF SERVICE

I, Ann Hamilton Jones, hereby certify that on this 5th day of May, 2007, I sent via first class, postage paid, United States Mail, a copy of the foregoing Motion To Delete/Combine Issues to the following persons:

Sprint Nextel
c/o Patrick McFadden, **Esq.**
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